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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JESSE COWAN, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

AXESSTEL, INC., H. CLARK  
HICKOCK, and PATRICK GRAY,

Defendants.

Case No.: '14CV1037 CAB BGS

**CLASS ACTION**

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Jesse Cowan (“Plaintiff”), by and through his attorneys, alleges the  
2 following upon information and belief, except as to those allegations concerning  
3 Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and  
4 belief is based upon, among other things, his counsel’s investigation, which  
5 includes without limitation: (a) review and analysis of regulatory filings made by  
6 AXESSTEL, INC. (“Axesstel” or the “Company”), with the United States  
7 Securities and Exchange Commission (“SEC”); (b) review and analysis of press  
8 releases and media reports issued by and disseminated by Axesstel; and (c) review  
9 of other publicly available information concerning Axesstel.  
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### 13 **NATURE OF THE ACTION AND OVERVIEW**

14  
15 1. This is a class action on behalf of purchasers of Axesstel’s securities  
16 between February 25, 2013 and March 31, 2014, inclusive (the “Class Period”),  
17 seeking to pursue remedies under the Securities Exchange Act of 1934 (the  
18 “Exchange Act”).  
19

20  
21 2. Axesstel is a provider of wireless voice, broadband access and  
22 connected home solutions for the worldwide telecommunications market.  
23 Axesstel’s product portfolio includes phones, wireline replacement terminals,  
24 security alert systems, and 3G and 4G broadband gateway devices. These products  
25 are used for voice calling, high-speed data access, and connected home  
26 management services.  
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1           3.     On June 13, 2013, the Company disclosed a change in the Company's  
2 sales leadership following the resignation of Axesstel's Chief Marketing Officer  
3 ("CMO") and provided investors updated information about the Company's  
4 anticipated second quarter performance and full year 2013 outlook. Specifically,  
5 the Company disclosed that it was anticipating a weak second quarter due to  
6 slower demand in Europe, product launches in Africa that were delayed to the  
7 second quarter as a result of minor warranty issues, and a slower than expected  
8 rollout of the Company's new products in 2013. Axesstel indicated that revenues  
9 for the second quarter would fall substantially below first quarter revenue of \$10.1  
10 million, and may be as low as \$2 million. Additionally, the Company indicated  
11 that the Company's Chief Executive Officer ("CEO") would be taking over the  
12 CMO's responsibilities.  
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18           4.     On this news, shares of Axesstel declined \$0.30 per share, nearly  
19 30%, to close at \$0.71 per share on June 13, 2013, on unusually heavy volume.  
20

21           5.     Thereafter, on October 17, 2013, the Company disclosed that it had  
22 terminated Axesstel's CEO and that the Company's revenues for the third quarter  
23 of 2013 were approximately \$300,000, well short of the Company's initial  
24 expectations. Moreover, Axesstel disclosed that the Company's accounts  
25 receivables included approximately \$9 million of sales to customers in Africa,  
26 which remained uncollected. The Company indicated that it was evaluating  
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1 various alternatives for collection, including reserves against the accounts or in  
2 some cases retaking possession of the product as inventory, and attempting to  
3 resell the product to third parties.  
4

5 6. On this news, shares of Axesstel declined \$0.15 per share, or 60%, to  
6  
7 close at \$0.10 per share on October 18, 2013, on unusually heavy volume.

8 7. On March 31, 2014, the Company revealed that Axesstel's  
9 management had concluded that the previously issued financial statements  
10 contained in the Company's Quarterly Reports on Form 10-Q for the quarters  
11 ended March 31, 2013, June 30, 2013, and September 30, 2013, should no longer  
12 be relied upon because of errors in those financial statements related to the  
13 recognition of revenue from sales to two customers in the first quarter of 2013.  
14 Axesstel informed investors that the decision had resulted from an investigation by  
15 the Company's executive management, with the assistance of the audit committee  
16 of the board of directors, outside counsel, and in consultation with the Company's  
17 independent accountants. The investigation was purportedly commenced after  
18 receipt of information that revenue had been recognized on two transactions prior  
19 to the satisfaction of the necessary criteria for revenue recognition. For the two  
20 orders in question, Axesstel indicated that the products were shipped and revenue  
21 recognized prior to March 31, 2013, based on what certain sales employees  
22 believed to be firm verbal commitments from two customers in Africa and that the  
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1 products were never paid for by the customers and in the fourth quarter of 2013,  
2 the products were returned by the customers and the accounts receivable were  
3 written off. According to the Company, the investigation revealed that certain key  
4 aspects of the sales to these two customers were not finalized at March 31, 2013,  
5 including payment terms and marketing allowances and that, therefore, the revenue  
6 associated with these potential sales should never have been recognized. As a  
7 result, Axesstel indicated that it intended to restate its financial information for the  
8 first three quarters of 2013 and that management had concluded that the  
9 Company's internal control over financial reporting were not effective.  
10  
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13  
14 8. On this news, shares of Axesstel declined \$0.01 per share, over 9%, to  
15 close at \$0.10 per share on April 1, 2014, on unusually heavy volume.  
16

17 9. Throughout the Class Period, Defendants made false and/or  
18 misleading statements, as well as failed to disclose material adverse facts about the  
19 Company's business, operations, and prospects. Specifically, Defendants made  
20 false and/or misleading statements and/or failed to disclose: (1) that the Company  
21 was facing issues that were negatively impacting the rollout of Axesstel's new  
22 Home Alert product line; (2) that, in the first quarter of 2013, certain aspects of  
23 sales to two customers in Africa, including payment terms and market allowances,  
24 were not finalized by the end of the quarter; (3) that the Company improperly  
25 recognized revenue from these sales to the two customers in Africa in the first  
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1 quarter of 2013 in violation of the Company's stated revenue recognition policy;  
2 (4) that, as a result, the Company's revenue and financial results were overstated;  
3  
4 (5) that, as a result, the Company misrepresented the progress of the rollout of the  
5 new Home Alert product line, as well as the true demand for the new product line;  
6  
7 (6) that the Company's financial statements were not prepared in accordance with  
8 Generally Accepted Accounting Principles ("GAAP"); (7) that the Company  
9 lacked adequate internal and financial controls; and (8) that, as a result of the  
10 foregoing, the Company's financial statements and other statements about  
11 Axesstel's business, operations, and prospects were materially false and misleading  
12 at all relevant times and/or lacked a reasonable basis.  
13  
14

15 10. As a result of Defendants' wrongful acts and omissions, and the  
16 precipitous decline in the market value of the Company's securities, Plaintiff and  
17 other Class members have suffered significant losses and damages.  
18

### 19 **JURISDICTION AND VENUE**

20  
21 11. The claims asserted herein arise under Sections 10(b) and 20(a) of the  
22 Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated  
23 thereunder by the SEC (17 C.F.R. § 240.10b-5).  
24

25 12. This Court has jurisdiction over the subject matter of this action  
26 pursuant to 28 U.S.C. §1331 and Section 27 of the Exchange Act (15 U.S.C.  
27 §78aa).  
28



1           17. Defendant H. Clark Hickock (“Hickock”) was, at all relevant times,  
2 CEO of the Company until October 13, 2013, and was, at all relevant times, a  
3  
4 director of the Company until his resignation on October 17, 2013.

5           18. Defendant Patrick Gray (“Gray”) was, at all relevant times, Chief  
6  
7 Financial Officer (“CFO”) of Axesstel, and was, at all relevant times, CEO of the  
8  
9 Company since October 13, 2013.

10           19. Defendants Hickock and Gray are collectively referred to hereinafter  
11 as the “Individual Defendants.” The Individual Defendants, because of their  
12  
13 positions with the Company, possessed the power and authority to control the  
14  
15 contents of Axesstel’s reports to the SEC, press releases and presentations to  
16  
17 securities analysts, money and portfolio managers and institutional investors, *i.e.*,  
18  
19 the market. Each defendant was provided with copies of the Company’s reports  
20  
21 and press releases alleged herein to be misleading prior to, or shortly after, their  
22  
23 issuance and had the ability and opportunity to prevent their issuance or cause  
24  
25 them to be corrected. Because of their positions and access to material non-public  
26  
27 information available to them, each of these defendants knew that the adverse facts  
28  
specified herein had not been disclosed to, and were being concealed from, the  
public, and that the positive representations which were being made were then  
materially false and/or misleading. The Individual Defendants are liable for the



1 false statements pleaded herein, as those statements were each “group-published”  
2 information, the result of the collective actions of the Individual Defendants.  
3

## 4 **SUBSTANTIVE ALLEGATIONS**

### 5 **Background**

6 20. Axesstel is a provider of wireless voice, broadband access and  
7 connected home solutions for the worldwide telecommunications market.  
8 Axesstel’s product portfolio includes phones, wireline replacement terminals,  
9 security alert systems, and 3G and 4G broadband gateway devices. These products  
10 are used for voice calling, high-speed data access, and connected home  
11 management services.  
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### 14 **Materially False and Misleading** 15 **Statements Issued During the Class Period**

16 21. The Class Period begins on February 25, 2013. On this day, the  
17 Company issued a press release entitled, “Axesstel Completes Shipments of New  
18 Wireless Home Alert Device.” Therein, the Company, in relevant part, stated:  
19

- 20 - Expands product suite with wireless security alert systems
- 21 - Provides network operators with additional “cut the cord” revenue streams
- 22 - Diversifies customer base in Africa
- 23
- 24

25 Axesstel, Inc. (OTCQB:AXST), a leading provider of wireless voice,  
26 broadband access and connected home solutions for the worldwide  
27 telecommunications market, launched its new wireless security alert  
28 systems by shipping approximately 40,000 AG50 Series Axesstel  
Home Alerts to two different customers in Africa.

1 The AG50 Series Axesstel Home Alert System uses GSM technology  
2 and has a built-in cellular module that can send an SMS or place a  
3 phone call to up to 8 pre-assigned numbers. This affordable, easy-to-  
4 set-up product can be used in homes or other locations for end-users  
5 desiring a self-monitored alert notification system. An Axesstel Home  
6 Alert utilizing CDMA technology is also available in the AX50  
7 Series.

8 Clark Hickock, chief executive officer for Axesstel, stated: “The  
9 launch of the Axesstel Home Alerts expands our suite of wire-line  
10 replacement products and further establishes Axesstel as a leader in  
11 developing 'cut the cord' devices. The security alert systems enable  
12 network operators to offer new products to their entire subscriber  
13 base, resulting in additional revenue without further incremental  
14 investment, as well as attract new subscribers. We plan to release a  
15 series of five Axesstel Home Alert security systems in key strategic  
16 global markets. The security alert system product roadmap includes  
17 advanced ‘all-in’ products incorporating voice, broadband access  
18 capabilities and optional features enabling a wide array of connected  
19 home applications. We are excited about the worldwide opportunities  
20 for this product.”

## 21 **Benefits**

- 22 • Provides wireless alert notification with a built-in cellular  
23 module that can send an SMS message or place a phone call to  
24 up to 8 pre-assigned numbers when the sensor detects motion
- Uses an AC adaptor with a 9V backup battery that provides  
continued functionality in the event of a power outage
- Arming and disarming can be triggered by keypad input or  
remotely by sending an SMS
- Delivers an affordable solution, which is easy to set up,  
configure and use

## 25 **Features**

- 26 • AG50 - 900MHz/1800MHz or 850MHz/1900MHz GSM/GPRS
- 27 • AX50 - 800MHz/1900MHz CDMA2000 1xRTT, IS95

- Call or SMS Alerting Numbers - Stores up to 8 pre-assigned numbers
- Remote Arm/Disarm Capabilities
- 9 Multiple LED Indicators - Power, Battery, GSM or CDMA, Setting/Register, Arming/Disarming, Zone Status Indicator 1-4
- Standard Telephone Keypad with Tactile Feel
- Audible Beeper for Programming Confirmation and Motion Detection
- Panic Button for Emergency Situations
- Silent Alarm Capability
- 9 Volt Battery for Emergency Backup
- Low Battery Warning LED
- Tamper Prevention on Alert Panel and Motion Sensor
- Magnetic Contact Window/Door Sensors (optional)
- Configure up to 64 Sensors/Motion Detectors

22. On February 28, 2013, the Company issued a press release entitled, “Axesstel Reports Fourth Quarter and Full Year 2012 Results.” Therein, the Company, in relevant part, stated:

- Grows full year revenue to \$59.7 million; up 10% compared to 2011
- Achieves record gross margin of 26% for the year
- Posts record annual net income of \$4.3 million and EPS of \$0.16
- Records sixth consecutive quarter of profitability

Axesstel (OTCQB: AXST), a leading provider of wireless voice, broadband access and connected home solutions to the worldwide telecommunications market, reported results for its fourth quarter and year ended December 31, 2012.

For the year ended December 31, 2012, Axesstel reported revenue of \$59.7 million and net income of \$4.3 million, or \$0.16 per diluted share. This compares to revenue of \$54.1 million and net income of \$1.1 million, or \$0.05 per diluted share, for 2011.

Clark Hickock, CEO of Axesstel, stated, “Today we reported the most profitable year in the company’s history. Overall, 2012 was our most

1 successful year ever as we posted records for several key financial  
2 metrics: gross margins of 26%, operating income of \$4.7 million, net  
3 income of \$4.3 million and EPS of \$0.16. We achieved our operating  
4 goals for the year by reporting annual revenue growth of 10% and  
5 achieving consistent quarterly profitability as we recorded our sixth  
consecutive profitable quarter.”

6 Axesstel reported revenue of \$15.8 million for the fourth quarter of  
7 2012. Net income for the period was \$824,000, or \$0.03 per diluted  
8 share. This compares to revenue of \$16.9 million and net income of  
9 \$1.0 million, or \$0.04 per diluted share, for the same period in the  
prior year.

10 Hickock commented, “Contributing to the fourth quarter results were  
11 sales from our existing Rev. B Wi-Fi gateway in Europe, which  
12 delivered \$7.9 million in revenue and continues to be our number one  
13 selling product globally. Sales of our wire-line replacement terminal  
14 to Sprint contributed \$2.1 million in revenue and sales of our first new  
15 wireless security alert notification systems to two different customers  
in Africa totaled \$3.5 million in revenue.”

16 The company completed two transactions that bolstered its balance  
17 sheet in 2012 and lowered its cost of borrowing. In September, it  
18 entered into an agreement with Wistron Neweb Corporation (WNC)  
19 to restructure an \$8.2 million past due account payable by paying  
20 \$458,000 in cash and issuing a \$7.7 million non-interest bearing note  
21 to WNC. The issuance of the note had a \$5.1 million positive impact  
22 on working capital at December 31, 2012, as that amount was  
23 reclassified from a current to long term liability. Also in September,  
24 the company entered into a one year \$7.0 million credit facility with  
Silicon Valley Bank. The new facility reduced the company’s cost of  
borrowing to 6% to 7% at current market rates, compared to 16% to  
24% under its prior facility.

25 ***Hickock continued, “Our 2012 results represent the successful***  
26 ***execution of our strategy to launch competitively-priced products,***  
27 ***aggressively reduce operating costs, and shift our customer focus to***  
28 ***servicing major carriers in specific markets. We have achieved a***  
***significant turnaround and put the company on the right footing for***  
***success in 2013 and beyond.”***

1  
2 *“We are very excited about 2013 with the launch of our new dual-*  
3 *mode gateway designed for the European market, which supports*  
4 *both GSM and CDMA technologies in one device, and the upcoming*  
5 *release of the next generation of our wire-line replacement*  
6 *terminals for the North American market.”*

7  
8 *“We also plan to release a series of five Axesstel Home Alert*  
9 *security alert systems in key strategic global markets. The initial*  
10 *product, which was launched in late 2012, provides basic wireless*  
11 *alert functions and is being marketed to the Middle East, Africa and*  
12 *Latin America. The second product provides similar functionality*  
13 *and is planned for release in the United States. The third product*  
14 *integrates the alert system with our wire-line replacement terminal*  
15 *and incorporates “connected-home” applications and will be*  
16 *targeted toward customers in the United States. The fourth and fifth*  
17 *products combine security alert, voice, and high speed data*  
18 *capabilities with a wide array of connected-home applications and*  
19 *are targeted for sale in the US, Europe and Latin America. “*

20 *“In summary, we made significant progress in 2012 but we believe*  
21 *the best is yet to come. We will focus on broadening our product,*  
22 *geographic and customer platforms to continue our success in*  
23 *2013,” Hickock concluded.*

24 \*\*\*

### 25 Recent Highlights

- 26 • *Shipped the first product in a new line of Axesstel Home Alert*  
27 *wireless security alert systems to two new customers in Africa.*
- 28 • Became a partner on Deutsche Telekom’s M2M Marketplace, a  
global online network dedicated to promoting adoption of M2M  
products and solutions in the booming M2M market.
- Launched its new SP100 Android smartphone.

(Emphasis added).

1           23. On February 28, 2013, Axesstel filed its Annual Report with the SEC  
2 on Form 10-K for the 2012 fiscal year. The Company's Form 10-K was signed by  
3 Defendants Hickock and Gray, and reaffirmed the Company's financial results  
4 previously announced that day. The Company's Form 10-K also contained  
5 Sarbanes-Oxley required certifications, signed by Defendants Hickock and Gray,  
6 who certified:  
7

- 8           1. I have reviewed this Annual Report on Form 10-K of Axesstel,  
9 Inc.;
- 10          2. Based on my knowledge, this report does not contain any  
11 untrue statement of a material fact or omit to state a material  
12 fact necessary to make the statements made, in light of the  
13 circumstances under which such statements were made, not  
14 misleading with respect to the period covered by this report;
- 15          3. Based on my knowledge, the financial statements, and other  
16 financial information included in this report, fairly present in all  
17 material respects the financial condition, results of operations  
18 and cash flows of the Registrant as of, and for, the periods  
19 presented in this report;
- 20          4. The Registrant's other certifying officer(s) and I are responsible  
21 for establishing and maintaining disclosure controls and  
22 procedures (as defined in Exchange Act Rules 13a-15(e) and  
23 15d-15(e)) and internal controls over financial reporting (as  
24 defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the  
25 registrant and have:
  - 26           (a) Designed such disclosure controls and procedures, or  
27 caused such disclosure controls and procedures to be  
28 designed under our supervision, to ensure that material  
information relating to the Registrant, including its  
consolidated subsidiaries, is made known to us by others  
within those entities, particularly during the period in  
which this report is being prepared;

- 1 (b) Designed such internal control over financial reporting,  
2 or caused such internal control over financial reporting to  
3 be designed under our supervision, to provide reasonable  
4 assurance regarding the reliability of financial reporting  
5 and the preparation of financial statements for external  
6 purposes in accordance with generally accepted  
7 accounting principles;
- 8 (c) Evaluated the effectiveness of the small Registrant's  
9 disclosure controls and procedures and presented in this  
10 report our conclusions about the effectiveness of the  
11 disclosure controls and procedures, as of the end of the  
12 period covered by this report based on such evaluation;  
13 and
- 14 (d) Disclosed in this report any change in the Registrant's  
15 internal control over financial reporting that occurred  
16 during the small business issuer's most recent fiscal  
17 quarter (the Registrant's fourth fiscal quarter in the case  
18 of an annual report) that has materially affected, or is  
19 reasonably likely to materially affect, the Registrant's  
20 internal control over financial reporting; and
- 21 5. The Registrant's other certifying officer(s) and I have disclosed,  
22 based on our most recent evaluation of internal control over  
23 financial reporting, to the Registrant's auditors and the audit  
24 committee of the Registrant's board of directors (or persons  
25 performing the equivalent functions):
- 26 (a) All significant deficiencies and material weaknesses in  
27 the design or operation of internal control over financial  
28 reporting which are reasonably likely to adversely affect  
the Registrant's ability to record, process, summarize and  
report financial information; and
- (b) Any fraud, whether or not material, that involves  
management or other employees who have a significant  
role in the Registrant's internal control over financial  
reporting.



24. On April 8, 2013, the Company issued a press release entitled, “Axesstel Reports First Quarter 2013 Results.” Therein, the Company, in relevant part, stated:

- Revenues of \$10.1 million –
- Record gross margin percentage of 29% –
- Net income of \$84,000 –
- New \$2.3 million three year term loan secured with Silicon Valley Bank –

Axesstel (OTCQB: AXST), a leading provider of wireless voice, broadband access and connected home solutions to the worldwide telecommunications market, reported results for its first quarter ended March 31, 2013.

*Axesstel reported revenues for the first quarter of 2013 of \$10.1 million and net income of \$84,000, or \$0.00 per diluted share. This compares to revenues of \$12.0 million and net income of \$472,000, or \$0.02 per diluted share, for the same period in the prior year.*

Clark Hickock, CEO of Axesstel, stated, “Revenue in the first quarter was below our operating target, *but we delivered strong performance on our new Home Alert products and our gross margin percentage. We sold over \$4.0 million of our new Home Alert security systems to new customers in the MEA region, which boosted our gross margin percentage to a record 29%. With tight control over operating expenses, we generated net income of \$84,000. We also improved our working capital position by \$95,000.*”

“Sales from our Rev. B Wi-Fi gateways contributed revenue of \$4.3 million, *Home Alert security systems delivered \$4.0 million*, with wireline replacement terminals contributing \$1.6 million and phones adding \$0.2 million in revenue. We did not receive orders from two significant customers for our top-selling gateway and wireline replacement terminals during the quarter. However, in the second half we expect overall sales for our existing gateway and new dual mode



1 gateway products to pick up as our European customers work through  
2 inventory issues and complete homologation testing of new products.  
3 While we did not receive any orders for wireline replacement  
4 terminals from Sprint during the quarter, we had record sales of these  
5 terminals to regional Tier 2 and 3 carriers in North America. Looking  
6 ahead, we are working with Sprint and other national carriers to  
7 develop products for launch in the second half of 2013. ***We also***  
8 ***addressed a minor design issue in our newly-released Home Alert***  
9 ***security systems that caused a delay in collection of certain***  
10 ***outstanding accounts receivable as well as a slowdown in follow-on***  
11 ***orders for those products.***”

12 ***“Our Home Alert product line is our initial entrance into the M2M***  
13 ***and connected home markets with a security application, giving***  
14 ***wireless network operators access to a new segment of these***  
15 ***markets. We are pleased with the interest we have received to date***  
16 ***and are excited about the new opportunities to broaden our product,***  
17 ***geographic and customer platforms. We are also launching the next***  
18 ***generation of our core gateway and wireline replacement terminal***  
19 ***products. Based on customer feedback, we expect those products to***  
20 ***be well received.***”

21 “As stated at the beginning of the year, our primary operating goals  
22 for 2013 are to maintain consistent profitability and to increase  
23 revenue by ten to fifteen percent year-over-year. As first quarter 2013  
24 revenues were lower than expected, we now anticipate first half 2013  
25 revenue to be lower than initially planned due to a slower rollout of  
26 our new products in 2013, and delays in customer testing and  
27 customer acceptance. The precise timing and success of these product  
28 introductions will have a material impact on our full year results, and  
the slower first half of the year will make it more difficult to meet our  
goal for annual revenue growth. ***We are releasing the next generation***  
***of our core products, as well as additions to our Home Alert***  
***products. We believe we will be very well positioned for significant***  
***growth in the second half of the year and beyond,***” Hickock  
***concluded.***

## **Financial Results**

*Revenues for the first quarter of 2013 were \$10.1 million, compared to \$12.0 million in the first quarter of 2012. Gross margin was \$3.0 million, or 29 percent of revenue, for the first quarter compared to gross margin of \$3.2 million, or 26 percent of revenue, in the same period last year.* First quarter 2013 operating expenses were \$2.7 million compared to \$2.3 million in the first quarter of 2012. Net income for the quarter was \$84,000, or \$0.00 per diluted share, compared to first quarter 2012 net income of \$472,000, or \$0.02 per diluted share.

At March 31, 2013, cash and cash equivalents were \$2.2 million, compared to \$1.9 million at December 31, 2012. Working capital was a deficit of \$2.1 million at March 31, 2013, compared to working capital deficit of \$2.2 million at December 31, 2012.

The company continues to fund its operating requirements through cash flows from operations and bank financings. On March 27, 2013, the company secured a three year \$2.3 million term loan with Silicon Valley Bank. In April 2013, the company successfully renewed a one year \$1.6 million term loan with a commercial bank in China.

Because of delayed customer collections from sales generated late in the fourth quarter of 2012, the company's accounts receivable balance increased significantly by \$6.7 million to \$21.9 million at March 31, 2013. The delay in collections necessitated increased borrowing under the company's credit facility to help manage accounts payable to key vendors. Borrowings from the company's bank line of credit were \$6.0 million at March 31, 2013, against an aggregate borrowing limit of \$7.0 million.

Pat Gray, chief financial officer, commented, *“While receivables and bank borrowings increased during the quarter, we continue to maintain strong relationships with our key customers, vendors and banks. Since the end of the quarter, we have received payments on the accounts, and expect to collect the balances, and to pay down corresponding bank balances to more traditional levels, over the next several months.”*

As a result of these transactions, Axesstel ended the first quarter of 2013 with \$9.8 million in bank financings, including \$6.0 million under the company's account receivable financing facility, and \$3.8 million under two term loans with commercial banks in the United States and China.

### **Recent Highlights**

- *Sold \$4.0 million of new Home Alert systems in the first quarter of 2013 totaling \$7.5 million over the past two quarters since the product release.*
- Secured a new three year \$2.3 million term loan with Silicon Valley Bank.
- Renewed its one year \$1.6 million term loan with a commercial bank in China.
- Amended its \$7.0 million accounts receivable credit facility to reduce the interest rate on borrowings against eligible accounts receivable.

(Emphasis added).

25. On May 14, 2013, Axesstel filed its Quarterly Report with the SEC on Form 10-Q for the 2013 fiscal first quarter. The Company's Form 10-Q was signed by Defendant Gray and reaffirmed the Company's financial results previously announced that day. The Company's 10-Q also contained Sarbanes-Oxley required certifications, signed by Defendants Hickock and Gray, substantially similar to the certifications contained in ¶23, *supra*.

26. The above statements contained in ¶¶21-25 were materially false and/or misleading when made because defendants failed to disclose or indicate the

1 following: (1) that the Company was facing issues that were negatively impacting  
2 the rollout of Axesstel's new Home Alert product line; (2) that, in the first quarter  
3 of 2013, certain aspects of sales to two customers in Africa, including payment  
4 terms and market allowances, were not finalized by the end of the quarter; (3) that  
5 the Company improperly recognized revenue from these sales to the two customers  
6 in Africa in the first quarter of 2013 in violation of the Company's stated revenue  
7 recognition policy; (4) that, as a result, the Company's revenue and financial  
8 results were overstated; (5) that, as a result, the Company misrepresented the  
9 progress of the rollout of the new Home Alert product line, as well as the true  
10 demand for the new product line; (6) that the Company's financial statements were  
11 not prepared in accordance with GAAP; (7) that the Company lacked adequate  
12 internal and financial controls; and (8) that, as a result of the foregoing, the  
13 Company's financial statements and other statements about Axesstel's business,  
14 operations, and prospects were materially false and misleading at all relevant times  
15 and/or lacked a reasonable basis.

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22 **The Truth Slowly Begins to Emerge**

23 27. On June 13, 2013, the Company issued a press release entitled,  
24 "Axesstel Provides Company Update." Therein, the Company, in relevant part,  
25 stated:  
26

27 – Changes sales leadership following Chief Marketing Officer  
28 resignation–

- Delivers revenue expectations for the second quarter of 2013 –
- Continues to anticipate an improved second half –

Axesstel (OTCQB: AXST), a leading provider of wireless voice, broadband access and connected home solutions to the worldwide telecommunications market, ***provided updates on its sales leadership following the resignation of Henrik Hoeffner, its chief marketing officer, as well as its anticipated second quarter performance and full year 2013 outlook.***

Clark Hickock, the Company's chief executive officer, has been increasingly active in key customer relationships and has assumed Mr. Hoeffner's management responsibilities. The sales executives for each of its four key regional markets now report directly to Mr. Hickock. The Company has reached an agreement with Mr. Hoeffner to provide advisory consulting services to transition key accounts and advance key strategic opportunities.

"We want to thank Henrik for his service and contribution to Axesstel," said Hickock. "He has been the consummate professional and assembled a team of experienced and capable regional sales executives who manage our day-to-day sales operations in North America, Latin America, Europe and the Middle East and Africa. We wish Henrik well."

***The Company is anticipating a weak second quarter due to slower demand in Europe, product launches in Africa that were delayed to the second quarter as a result of minor warranty issues, and a slower than expected rollout of the Company's new products in 2013. The Company believes that revenues for the second quarter will fall substantially below first quarter revenue of \$10.1 million, and may be as low as \$2 million.***

Hickock continued, "Our quarterly revenues have always been subject to volatility based on the timing of large orders. ***The transition to our next generation product lines is moving slower than anticipated, but we will work through these issues and expect our performance to return to historic levels later in 2013. Despite what looks like a very weak second quarter, we are continuing to receive positive feedback from our customers about our new product lines, and expect that the***

1 *second half of the year will show improved sales and results of*  
2 *operations.”*

3 *“We are confident in our product strategies, including our entrance*  
4 *into the rapidly growing M2M and connected home markets. We*  
5 *expect to retain market share in Europe with our broadband*  
6 *gateway devices and to expand our addressable market with the*  
7 *recent launch of our dual-mode gateway device. We are adding*  
8 *functionality to our next generation of wireline replacement*  
9 *terminals for the North American market. We have multiple releases*  
10 *scheduled for our Home Alert product line, targeted to address the*  
11 *requirements of specific geographic regions or customers. Scheduled*  
12 *for launch in North America later in 2013, we are putting Home Alert*  
13 *products in the development lab with Sprint, and are working with*  
14 *other carriers in North America and other regions. We need to get*  
15 *these products completed, tested and released, but expect that the*  
16 *Home Alert products will be one of our largest selling product lines.*  
17 *We remain very excited about our future,” concluded Hickock.*

18 (Emphasis added).

19 28. On this news, shares of Axesstel declined \$0.30 per share, nearly  
20 30%, to close at \$0.71 per share on June 13, 2013, on unusually heavy volume.

21 29. The above statements contained in ¶27 was materially false and/or  
22 misleading when made because defendants failed to disclose or indicate the  
23 following: (1) that the Company was facing issues that were negatively impacting  
24 the rollout of Axesstel’s new Home Alert product line; (2) that, in the first quarter  
25 of 2013, certain aspects of sales to two customers in Africa, including payment  
26 terms and market allowances, were not finalized by the end of the quarter; (3) that  
27 the Company improperly recognized revenue from these sales to the two customers  
28 in Africa in the first quarter of 2013 in violation of the Company’s stated revenue

1 recognition policy; (4) that, as a result, the Company's revenue and financial  
2 results were overstated; (5) that, as a result, the Company misrepresented the  
3 progress of the rollout of the new Home Alert product line, as well as the true  
4 demand for the new product line; (6) that the Company's financial statements were  
5 not prepared in accordance with GAAP; (7) that the Company lacked adequate  
6 internal and financial controls; and (8) that, as a result of the foregoing, the  
7 Company's financial statements and other statements about Axesstel's business,  
8 operations, and prospects were materially false and misleading at all relevant times  
9 and/or lacked a reasonable basis.

10  
11 30. On August 13, 2013, the Company issued a press release entitled,  
12 "Axesstel Reports Second Quarter 2013 Results." Therein, the Company, in  
13 relevant part, stated:

14  
15 Axesstel (OTCQB: AXST), a leading provider of wireless voice,  
16 broadband access and connected home solutions to the worldwide  
17 telecommunications market, reported results for its second quarter  
18 ended June 30, 2013.

19  
20 Axesstel reported revenues for the second quarter of 2013 of \$1.2  
21 million and net loss of \$2.5 million, or a loss of \$0.10 per diluted  
22 share. This compares to revenues of \$15.5 million and net income of  
23 \$896,000, or earnings of \$0.03 per diluted share, for the same period  
24 in the prior year.

25  
26 Clark Hickock, CEO of Axesstel, stated, *"The second quarter of*  
27 *2013 was a 'perfect storm' for Axesstel, with several issues hitting us*  
28 *all at the same time. We experienced a drop in sales of our*  
*traditional products, a delay in the launch of our new product lines,*  
*and slow collection of receivables that impacted our cash and*



1 *working capital position. While we did not anticipate the timing or*  
2 *concurrence of these events, they are each known risks inherent to*  
3 *our business, and we are aggressively managing our way through*  
4 *them. At the same time, and despite the launch delays, our new*  
5 *Home Alert products have generated opportunities that will be very*  
6 *significant if we can convert them to firm orders.”*

7 “In Europe, our two largest gateway customers did not place any  
8 significant orders during the second quarter. One of these customers  
9 ordered their first half requirements in the first quarter and we expect  
10 follow-on orders from this customer in the third quarter. We expect  
11 full year orders from this customer to be comparable to last year. The  
12 other principal customer for our gateway products experienced slower  
13 than expected sell through of our gateway products during the first  
14 half of 2013 and continues to work through accumulated inventory.  
15 Although we anticipate additional orders once it corrects its inventory  
16 levels, the yearly volume for this customer will fall significantly  
17 below our original expectations for 2013.”

18 “In North America, we are transitioning our wireline replacement  
19 terminal product line to next generation products. We have developed  
20 the next generation version of our base terminal with improved  
21 performance and a lower price point and are working to establish  
22 market share for this product with carriers in North America. In  
23 addition, we are nearing completion of a wireline replacement  
24 terminal that incorporates some of the functions of our Home Alert  
25 product line. We are working with Sprint and other customers on this  
26 device. We expected orders for these products to commence in the  
27 second quarter, but testing and launch have progressed slower than we  
28 originally anticipated, and we now expect orders to commence in the  
second half of 2013.”

29 *“Finally, the rollout of our new Home Alert product line has*  
30 *progressed slower than originally anticipated. We have experienced*  
31 *some of the normal issues associated with the transition to a new*  
32 *product category. A minor warranty issue in the first quarter*  
33 *delayed the product launch in Africa. We corrected that issue in the*  
34 *second quarter. Those units are now being moved into the channel*  
35 *and are expected to launch during the third quarter, which should*  
36 *result in follow-on orders from those customers in Africa later in the*



1 *second half of 2013. We are also continuing to demonstrate our*  
 2 *Home Alert products to carriers in North America, Europe, and*  
 3 *Latin America and are receiving significant interest. Testing and*  
 4 *product launch have progressed slower than anticipated, but interest*  
 5 *in the product line remains high, and we expect orders to come in*  
 6 *later in the third quarter or fourth quarter of the year.* Due to the  
 7 elongated sales cycles with Tier 1 carriers in North America, we are  
 8 pursuing an additional path to bring our new Home Alert product line  
 9 directly to retail outlets through various mobile virtual network  
 10 operators. This strategy allows for a more streamlined certification  
 11 process, thereby quickening time to market.”

12 “We are not going to minimize the significance of our first half  
 13 operating results. The net loss has had a significant impact on our  
 14 working capital position. *Nonetheless, we continue to have*  
 15 *confidence in our long term strategic direction. We expect orders for*  
 16 *our gateway and Home Alert products to build in the third quarter.*  
 17 *We continue to receive high customer interest in our Home Alert*  
 18 *products and are pursuing significant opportunities for this new*  
 19 *product line which, if successful, could result in a strong fourth*  
 20 *quarter. We continue to believe our new Home Alert product line,*  
 21 *along with our new gateway and advanced terminal products,*  
 22 *position the company well for growth in late 2013 and beyond,”*  
 23 *Hickock concluded.*

## 24 Financial Results

25 Revenues for the second quarter of 2013 were \$1.2 million, compared  
 26 to \$15.5 million in the second quarter of 2012. Gross margin was  
 27 \$335,000, or 28 percent of revenue, for the second quarter compared  
 28 to gross margin of \$3.6 million, or 23 percent of revenue, in the same  
 period last year. Second quarter 2013 operating expenses were \$2.9  
 million compared to \$2.3 million in the second quarter of 2012. Net  
 loss for the quarter was \$2.5 million, or a loss of \$0.10 per diluted  
 share, compared to second quarter 2012 net income of \$896,000, or  
 earnings of \$0.03 per diluted share.

For the six months ended June 30, 2013, the company reported  
 revenue of \$11.3 million and gross margin of 29 percent, compared to  
 \$27.6 million and 25 percent, respectively, for the first half of 2012.

1 Net loss for the first half of 2013 was \$2.4 million, or a loss of \$0.10  
2 per diluted share, compared to a net income of \$1.4 million, or  
3 earnings of \$0.05 per diluted share, in the first half of 2012.

4 At June 30, 2013, cash and cash equivalents were \$76,000, compared  
5 to \$1.9 million at December 31, 2012. Working capital was a deficit  
6 of \$4.8 million at June 30, 2013.

7 Pat Gray, chief financial officer, commented, *“The reduction in cash*  
8 *is due in part to slow collection of accounts receivable. We started*  
9 *the quarter with \$21.9 million of accounts receivable. We finished*  
10 *the quarter with an account receivable balance of \$15.2 million, of*  
11 *which, \$12.2 million was past due. We collected \$7.7 million of*  
12 *accounts receivable during the quarter and an additional \$3.0*  
*million to date in the third quarter. We expect to collect the*  
*remaining receivables in the second half of 2013.”*

13 The company has traditionally funded its operating requirements  
14 through cash flows from operations and bank financings. Axesstel  
15 ended the second quarter of 2013 with \$6.0 million in bank  
16 financings, including \$2.1 million under the company’s account  
17 receivable financing facility, and \$3.9 million under two term loans  
18 with commercial banks in the United States and China. The recent net  
19 loss caused an event of default under the Company’s \$2.25 million  
20 term loan facility, and the company is working with the bank on a  
forbearance arrangement and restructured repayment arrangement.  
Consequently, the company has reclassified the long term portion of  
the term loan to a short term liability at June 30, 2013.

21 (Emphasis added).  
22

23 31. On August 13, 2013, Axesstel filed its Quarterly Report with the SEC  
24 on Form 10-Q for the 2013 fiscal second quarter. The Company’s Form 10-Q was  
25 signed by Defendant Gray, and reaffirmed the Company’s financial results  
26 previously announced that day. The Company’s 10-Q also contained Sarbanes-  
27  
28

1 Oxley required certifications, signed by Defendants Hickock and Gray,  
2 substantially similar to the certifications contained in ¶23, *supra*.  
3

4 32. The above statements contained in ¶¶30-31 were materially false  
5 and/or misleading when made because defendants failed to disclose or indicate the  
6 following: (1) that the Company was facing issues that were negatively impacting  
7 the rollout of Axesstel's new Home Alert product line; (2) that, in the first quarter  
8 of 2013, certain aspects of sales to two customers in Africa, including payment  
9 terms and market allowances, were not finalized by the end of the quarter; (3) that  
10 the Company improperly recognized revenue from these sales to the two customers  
11 in Africa in the first quarter of 2013 in violation of the Company's stated revenue  
12 recognition policy; (4) that, as a result, the Company's revenue and financial  
13 results were overstated; (5) that, as a result, the Company misrepresented the  
14 progress of the rollout of the new Home Alert product line, as well as the true  
15 demand for the new product line; (6) that the Company's financial statements were  
16 not prepared in accordance with GAAP; (7) that the Company lacked adequate  
17 internal and financial controls; and (8) that, as a result of the foregoing, the  
18 Company's financial statements and other statements about Axesstel's business,  
19 operations, and prospects were materially false and misleading at all relevant times  
20 and/or lacked a reasonable basis.  
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33. On October 17, 2013, Axesstel filed a Current Report with the SEC on Form 8-K. Therein, the Company, in relevant part, stated:

**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

On October 13, 2013, our Board of Directors appointed Patrick Gray, our current Chief Financial Officer, to the additional role of Chief Executive Officer, effectively immediately. Mr. Gray has been our Chief Financial Officer since 2007. Additional information concerning Mr. Gray's background and experience can be found in our definitive proxy statement on Schedule 14A filed with the SEC on April 30, 2013.

Mr. Gray succeeds Mr. Clark Hickock. *On October 14, 2013, our Board of Directors provided Mr. Hickock with notice of its election to terminate his employment agreement with the company, dated June 7, 2012, without cause, in accordance with its terms.* Under that employment agreement, Mr. Hickock is entitled to 30 days notice of termination and to payment of certain severance compensation.

On October 17, 2013, Mr. Hickock gave notice of his resignation as a member of our Board of Directors effective immediately.

**Item 8.01. Other Events.**

In connection with our quarterly report on form 10-Q for the period ended June 30, 2013, we stated "We expect that our third quarter operations will improve as compared to the second quarter, but not to historic levels. Customer interest suggests that, if we can convert identified opportunities to firm orders, we could have a strong fourth quarter."

Our revenues for the third quarter of 2013 were approximately \$300,000, well short of our initial expectations. We expected sales of our gateway products in Europe to pick up during the third quarter. We did receive an order from one of our two major European customers, but that order is for delivery in the fourth quarter of 2013

1 and first quarter of 2014. The second major customer is not expected  
2 to place additional orders until 2014. We also expected to generate  
3 revenue from sales of our Home Alert product line. We have been  
4 working with carriers and retailers in North America and other  
5 regions, but we did not complete any material sales during the quarter.  
6 We have a some backlog of orders entering the fourth quarter.  
7 However, we do not expect our fourth quarter revenues to reach the  
8 levels we experienced in 2011 and 2012.

9 We used cash collected from accounts receivable to fund operations  
10 during the third quarter. We began the quarter with \$15.1 million of  
11 accounts receivable, and collected \$4.0 million of those accounts  
12 during the quarter. ***The remaining \$11.1 million of accounts  
13 receivable includes approximately \$9.0 million of sales to customers  
14 in Africa. Those accounts are aging and we are evaluating various  
15 alternatives for collection, including reserves against the accounts  
16 or in some cases retaking possession of the product as inventory,  
17 and attempting to resell the product to third parties.***

18 (Emphasis added).

19 34. On this news, shares of Axestel declined \$0.15 per share, or 60%, to  
20 close at \$0.10 per share on October 18, 2013, on unusually heavy volume.

21 35. On November 19, 2013, Axestel filed its Quarterly Report with the  
22 SEC on Form 10-Q for the 2013 fiscal second quarter. The Company's Form 10-Q  
23 was signed by Defendant Gray. The Company's 10-Q also contained Sarbanes-  
24 Oxley required certifications, signed by Defendant Gray, substantially similar to  
25 the certifications contained in ¶23, *supra*.

26 36. The statements contained in ¶¶33 and 35 were materially false and/or  
27 misleading when made because defendants failed to disclose or indicate the  
28 following: (1) that the Company was facing issues that were negatively impacting

1 the rollout of Axesstel's new Home Alert product line; (2) that, in the first quarter  
2 of 2013, certain aspects of sales to two customers in Africa, including payment  
3 terms and market allowances, were not finalized by the end of the quarter; (3) that  
4 the Company improperly recognized revenue from these sales to the two customers  
5 in Africa in the first quarter of 2013 in violation of the Company's stated revenue  
6 recognition policy; (4) that, as a result, the Company's revenue and financial  
7 results were overstated; (5) that, as a result, the Company misrepresented the  
8 progress of the rollout of the new Home Alert product line, as well as the true  
9 demand for the new product line; (6) that the Company's financial statements were  
10 not prepared in accordance with GAAP; (7) that the Company lacked adequate  
11 internal and financial controls; and (8) that, as a result of the foregoing, the  
12 Company's financial statements and other statements about Axesstel's business,  
13 operations, and prospects were materially false and misleading at all relevant times  
14 and/or lacked a reasonable basis.

### 15 **Disclosures at the End of the Class Period**

16  
17 37. On March 31, 2014, the Company filed a current report with the SEC  
18 on Form 8-K. Therein, the Company, in relevant part, stated:

#### 19 **Item 2.02. Results of Operations and Financial Condition.**

20  
21 We are announcing our preliminary unaudited results of operations for  
22 the fourth quarter of 2013 and for the year ended December 31, 2013.  
23  
24  
25  
26  
27  
28

1 *Revenues for the fourth quarter were approximately \$800,000. For*  
2 *the year ended December 31, 2013, revenues were approximately*  
3 *\$8.6 million. As discussed in Item 4.02 below, we are restating our*  
4 *financial statements for the first quarter of 2013, which we believe*  
5 *will result in a \$3.9 million reduction in revenue for that period and*  
6 *for the year ended December 31, 2013.*

7 *We anticipate a net loss for the year of approximately \$10.0 million.*  
8 *The net loss may increase, depending on the final determination of*  
9 *inventory reserves.*

10 We finished the year with cash and cash equivalents of \$10,000 and a  
11 working capital deficit of approximately \$12.0 million, subject to  
12 possible increase depending on final determination of inventory  
13 reserves. *The low revenues and continued slow collection of*  
14 *accounts receivable have significantly constrained our cash*  
15 *resources. We remain in default under our \$2.3 million Loan and*  
16 *Security Agreement with Silicon Valley Bank. Our \$1.6 million term*  
17 *loan with Bank of Communications, Ltd. in China comes due in*  
18 *April 2014. We are currently negotiating an extension of the term of*  
19 *that loan, but have not reached agreement for any extension at this*  
20 *time. We continue to be significantly past due to our contract*  
21 *manufacturers in China. Those manufacturers have restricted their*  
22 *credit terms with us.*

23 Our fourth quarter revenue resulted from sales of our gateway  
24 products to a customer in Europe. We will generate some additional  
25 sales to this customer during the first quarter of 2014. However, this  
26 customer and our other key European customer for our gateway  
27 products plan to transition their networks to 4G during calendar 2014.  
28 There are a number of competitors offering gateway products for 4G  
networks and, as a result, we are not anticipating significant orders for  
our traditional gateway products in 2014. We are focusing our efforts  
on sales of our Home Alert products, particularly in North America.

**Item 4.02. Non-Reliance on Previously Issued Financial  
Statements or a Related Auditor Report or Completed Interim  
Review.**



1        *On March 27, 2014, executive management of our Company*  
2        *concluded that the previously issued unaudited financial statements*  
3        *contained in our quarterly report on Form 10-Q for the quarter*  
4        *ended March 31, 2013, and the two subsequent unaudited quarterly*  
5        *reports on Form 10-Q in 2013 for the periods ended June 30, 2013*  
6        *and September 30, 2013 (collectively the “Prior Periods”), should no*  
7        *longer be relied upon because of errors in those financial*  
8        *statements. The errors relate to the recognition of revenue from*  
9        *sales to two customers in the first quarter of 2013. In addition to the*  
10       *financial statements of the Prior Periods, related press releases*  
11       *furnished on current reports on Form 8-K, reports and stockholder*  
12       *communications describing our financial statements for the Prior*  
13       *Periods should no longer be relied upon.*

14       *The conclusion that the financial statements for the Prior Periods*  
15       *cannot be relied upon is the result of an investigation by our*  
16       *executive management, with the assistance of the audit committee of*  
17       *our board of directors, our outside counsel, and in consultation with*  
18       *our independent accountants. The investigation commenced*  
19       *following the recent receipt of information that revenue was*  
20       *recognized on two transactions prior to the satisfaction of necessary*  
21       *criteria for revenue recognition. Our policy is to recognize revenue*  
22       *from product sales when the risks of loss and title pass to the*  
23       *customer, assuming all other revenue recognition criteria are met.*  
24       *Depending on the terms of sale, title and risk of loss pass on delivery*  
25       *to the common carrier on shipment, or on delivery to the customer’s*  
26       *facility. For the two orders in question, products were shipped and*  
27       *revenue recognized prior to March 31, 2013, based on what certain*  
28       *of our sales employees believed to be firm verbal commitments from*  
29       *two customers in Africa. The products were never paid for by the*  
30       *customers and in the fourth quarter of 2013, the products were*  
31       *returned by the customers and the accounts receivable were written*  
32       *off. However, our recent investigation revealed that certain key*  
33       *aspects of the sales to these two customers were not finalized at*  
34       *March 31, 2013, including payment terms and marketing*  
35       *allowances. Therefore, the revenue associated with these potential*  
36       *sales should never have been recognized.*

37       *Preliminary indications are that the impact to the Prior Periods of*  
38       *correcting the errors in revenue recognition will be to decrease*



1 *revenue for the quarter ended March 31, 2013 and for the nine*  
2 *month period ended September 30, 2013 by approximately \$3.9*  
3 *million, with corresponding decreases in operating income and net*  
4 *income, and an increase in total stockholders' deficit.* We are  
5 continuing to evaluate the total amount of the adjustments and the  
6 specific impact on each period covered by the restatement, which may  
7 result in an increase or decrease in previously reported amounts for  
8 the Prior Periods.

9 *We intend to include restated financial information for the first*  
10 *three quarterly periods in our Annual Report on Form 10-K for the*  
11 *year ended December 31, 2013, to reflect the resulting adjustments*  
12 *in revenues, net loss, and additional non-cash items in our financial*  
13 *statements.* As a result of the restatement of our interim results, as  
14 well as delays in completing our audit as a result of our limited  
15 financial resources, we do not expect to file our Annual Report on  
16 Form 10-K by the March 31, 2014 filing deadline. We currently  
17 expect to file our Annual Report on form 10-K in early May 2014.

18 We have considered the effect of the restatement on our prior  
19 conclusions of the adequacy of our internal controls over financial  
20 reporting at the end of each of the applicable restatement periods. *As a*  
21 *result of the errors described above, management has concluded*  
22 *that the Company's internal control over financial reporting were*  
23 *not effective to a reasonable assurance as of the ends of each of the*  
24 *periods covered by the restatement.* We will amend any disclosures  
25 pertaining to our evaluation of such controls and procedures as  
26 appropriate in connection with the Annual Report on Form 10-K. We  
27 have subsequently designed and implemented new internal controls  
28 and procedures to strengthen our internal controls over financial  
reporting specifically with regard to the determination of revenue  
recognition. With these changes now in place, management believes  
that our internal controls over financial reporting are effective at the  
“reasonable assurance” level.

(Emphasis added).

38. On this news, shares of Axesstel declined \$0.01 per share, over 9%, to  
close at \$0.10 per share on April 1, 2014, on unusually heavy volume.

**AXESSTEL'S VIOLATION OF GAAP RULES  
IN ITS FINANCIAL STATEMENTS  
FILED WITH THE SEC**

35. These financial statements and the statements about the Company's financial results were false and misleading, as such financial information was not prepared in conformity with GAAP, nor was the financial information a fair presentation of the Company's operations due to the Company's improper recording of revenue, in violation of GAAP rules.

36. GAAP are those principles recognized by the accounting profession as the conventions, rules and procedures necessary to define accepted accounting practice at a particular time. Regulation S-X (17 C.F.R. § 210.4-01(a)(1)) states that financial statements filed with the SEC which are not prepared in compliance with GAAP are presumed to be misleading and inaccurate. Regulation S-X requires that interim financial statements must also comply with GAAP, with the exception that interim financial statements need not include disclosure which would be duplicative of disclosures accompanying annual financial statements. 17 C.F.R. § 210.10-01(a).

37. The fact that Axesstel announced that it intends to restate its financial statements, and informed investors that these financial statements should not be relied upon is an admission that they were false and misleading when originally issued (APB No.20, 7-13; SFAS No. 154, 25).

1           38. Given these accounting irregularities, the Company announced  
2 financial results that were in violation of GAAP and the following principles:

3  
4           (a) The principle that “interim financial reporting should be based  
5 upon the same accounting principles and practices used to prepare annual financial  
6 statements” was violated (APB No. 28, 10);  
7

8           (b) The principle that “financial reporting should provide  
9 information that is useful to present to potential investors and creditors and other  
10 users in making rational investment, credit, and similar decisions” was violated  
11 (FASB Statement of Concepts No. 1, 34);  
12

13           (c) The principle that “financial reporting should provide  
14 information about the economic resources of Axesstel, the claims to those  
15 resources, and effects of transactions, events, and circumstances that change  
16 resources and claims to those resources” was violated (FASB Statement of  
17 Concepts No. 1, 40);  
18  
19

20           (d) The principle that “financial reporting should provide  
21 information about Axesstel’s financial performance during a period” was violated  
22 (FASB Statement of Concepts No. 1, 42);  
23  
24

25           (e) The principle that “financial reporting should provide  
26 information about how management of Axesstel has discharged its stewardship  
27  
28

1 responsibility to owners (stockholders) for the use of Axesstel resources entrusted  
2 to it” was violated (FASB Statement of Concepts No. 1, 50);  
3

4 (f) The principle that “financial reporting should be reliable in that  
5 it represents what it purports to represent” was violated (FASB Statement of  
6 Concepts No. 2, 58-59);  
7

8 (g) The principle that “completeness, meaning that nothing is left  
9 out of the information that may be necessary to insure that it validly represents  
10 underlying events and conditions” was violated (FASB Statement of Concepts No.  
11 2, 79); and  
12

13 (h) The principle that “conservatism be used as a prudent reaction  
14 to uncertainty to try to ensure that uncertainties and risks inherent in business  
15 situations are adequately considered” was violated (FASB Statement of Concepts  
16 No. 2, 95).  
17

18  
19 39. The adverse information concealed by Defendants during the Class  
20 Period and detailed above was in violation of Item 303 of Regulation S-K under  
21 the federal securities law (17 C.F.R. §229.303).  
22

### 23 **CLASS ACTION ALLEGATIONS**

24

25 40. Plaintiff brings this action as a class action pursuant to Federal Rule of  
26 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who  
27 purchased Axesstel securities between February 25, 2013 and March 31, 2014,  
28

1 inclusive (the “Class Period”) and who were damaged thereby. Excluded from the  
2 Class are Defendants, the officers and directors of the Company, at all relevant  
3 times, members of their immediate families and their legal representatives, heirs,  
4 successors or assigns and any entity in which Defendants have or had a controlling  
5 interest.  
6  
7

8 41. The members of the Class are so numerous that joinder of all  
9 members is impracticable. Throughout the Class Period, Axesstel securities were  
10 actively traded and quoted on the OTCQB, a highly efficient marketplace. While  
11 the exact number of Class members is unknown to Plaintiff at this time and can  
12 only be ascertained through appropriate discovery, Plaintiff believes that there are  
13 hundreds or thousands of members in the proposed Class. Hundreds of thousands  
14 of Axesstel shares were traded publicly during the Class Period, demonstrating an  
15 active and broad market for Axesstel stock and permitting a strong presumption of  
16 an efficient market. Record owners and other members of the Class may be  
17 identified from records maintained by Axesstel or, its transfer agent and may be  
18 notified of the pendency of this action by mail, using the form of notice similar to  
19 that customarily used in securities class actions.  
20  
21  
22  
23  
24

25 42. Plaintiff’s claims are typical of the claims of the members of the Class  
26 as all members of the Class are similarly affected by Defendants’ wrongful  
27 conduct in violation of federal law that is complained of herein.  
28

1           43. Plaintiff will fairly and adequately protect the interests of the  
2 members of the Class and has retained counsel competent and experienced in class  
3 and securities litigation.  
4

5           44. Common questions of law and fact exist as to all members of the  
6 Class and predominate over any questions solely affecting individual members of  
7 the Class. Among the questions of law and fact common to the Class are:  
8

9           (a) whether the federal securities laws were violated by Defendants' acts  
10 as alleged herein;  
11

12           (b) whether statements made by Defendants to the investing public during  
13 the Class Period omitted and/or misrepresented material facts about the business,  
14 operations, management, and prospects of Axesstel; and  
15

16           (c) to what extent the members of the Class have sustained damages and  
17 the proper measure of damages.  
18

19           45. A class action is superior to all other available methods for the fair  
20 and efficient adjudication of this controversy since joinder of all members is  
21 impracticable. Furthermore, as the damages suffered by individual Class members  
22 may be relatively small, the expense and burden of individual litigation make it  
23 impossible for members of the Class to individually redress the wrongs done to  
24 them. There will be no difficulty in the management of this action as a class  
25 action.  
26  
27  
28

**UNDISCLOSED ADVERSE FACTS**

46. The market for Axesstel securities was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements, and failures to disclose, Axesstel securities traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Axesstel securities relying upon the integrity of the market price of the Company's securities and market information relating to Axesstel, and have been damaged thereby.

47. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of Axesstel securities, by publicly issuing false and/or misleading statements and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and/or misleading. Said statements and/or omissions were materially false and/or misleading in that they failed to disclose material adverse information and/or misrepresented the truth about the Company, its business, operations, management, and prospects, as alleged herein.

48. At all relevant times, the material misrepresentations and/or omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants



1 made or caused to be made a series of materially false and/or misleading  
2 statements about Axesstel's business, operations, management, and prospects.  
3  
4 These material misstatements and/or omissions had the cause and effect of creating  
5 in the market an unrealistically positive assessment of the Company and its  
6 business and operations, thus causing the Company's securities to be overvalued  
7 and artificially inflated at all relevant times. Defendants' materially false and/or  
8 misleading statements during the Class Period resulted in Plaintiff and other  
9 members of the Class purchasing the Company's securities at artificially inflated  
10 prices, thus causing the damages complained of herein.  
11  
12

#### 13 **LOSS CAUSATION**

14  
15 49. Defendants' wrongful conduct, as alleged herein, directly and  
16 proximately caused the economic loss suffered by Plaintiff and the Class.  
17

18 50. During the Class Period, Plaintiff and the Class purchased Axesstel  
19 securities at artificially inflated prices and were damaged thereby. The price of the  
20 Company's securities significantly declined when the misrepresentations made to  
21 the market, and/or the information alleged herein to have been concealed from the  
22 market, and/or the effects thereof, were revealed, causing investors' losses.  
23  
24

#### 25 **SCIENTER ALLEGATIONS**

26 51. As alleged herein, Defendants acted with scienter in that Defendants  
27 knew that the public documents and statements issued or disseminated in the name  
28

1 of the Company were materially false and/or misleading; knew that such  
2 statements or documents would be issued or disseminated to the investing public;  
3 and knowingly and substantially participated or acquiesced in the issuance or  
4 dissemination of such statements or documents as primary violations of the federal  
5 securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of  
6 their receipt of information reflecting the true facts regarding Axesstel, his control  
7 over, and/or receipt and/or modification of Axesstel allegedly materially  
8 misleading misstatements and/or their associations with the Company which made  
9 them privy to confidential proprietary information concerning Axesstel,  
10 participated in the fraudulent scheme alleged herein.

11  
12  
13  
14  
15 **APPLICABILITY OF PRESUMPTION OF RELIANCE**  
16 **(FRAUD-ON-THE-MARKET DOCTRINE)**

17 52. The market for Axesstel securities was open, well-developed and  
18 efficient at all relevant times. As a result of the materially false and/or misleading  
19 statements and/or failures to disclose, Axesstel securities traded at artificially  
20 inflated prices during the Class Period. Plaintiff and other members of the Class  
21 purchased or otherwise acquired the Company's securities relying upon the  
22 integrity of the market price of Axesstel securities and market information relating  
23 to Axesstel, and have been damaged thereby.

24 53. During the Class Period, the artificial inflation of Axesstel's stock was  
25 caused by the material misrepresentations and/or omissions particularized in this  
26  
27  
28

1 Complaint causing the damages sustained by Plaintiff and other members of the  
2 Class. As described herein, during the Class Period, Defendants made or caused to  
3 be made a series of materially false and/or misleading statements about Axesstel's  
4 business, operations, management, and prospects. These material misstatements  
5 and/or omissions created an unrealistically positive assessment of Axesstel and its  
6 business, operations, management, and prospects, thus causing the price of the  
7 Company's securities to be artificially inflated at all relevant times, and when  
8 disclosed negatively affected the value of the Company stock. Defendants'  
9 materially false and/or misleading statements during the Class Period resulted in  
10 Plaintiff and other members of the Class purchasing the Company's securities at  
11 such artificially inflated prices, and each of them has been damaged as a result.

12  
13  
14  
15  
16 54. At all relevant times, the market for Axesstel securities was an  
17 efficient market for the following reasons, among others:

18  
19 (a) Axesstel stock met the requirements for quotation and/or listing, and  
20 was quoted and/or listed and actively traded and/or quoted on the OTCQB, a  
21 highly efficient marketplace;

22  
23 (b) As a regulated issuer, Axesstel filed periodic public reports with the  
24 SEC;

25  
26 (c) Axesstel regularly communicated with public investors *via* established  
27 market communication mechanisms, including through regular dissemination of  
28

1 press releases on the national circuits of major newswire services and through  
2 other wide-ranging public disclosures, such as communications with the financial  
3 press and other similar reporting services; and  
4

5 (d) Axesstel was followed by securities analysts employed by major  
6 brokerage firms who wrote reports about the Company, and these reports were  
7 distributed to the sales force and certain customers of their respective brokerage  
8 firms. Each of these reports was publicly available and entered the public  
9 marketplace.  
10  
11

12 55. As a result of the foregoing, the market for Axesstel securities  
13 promptly digested current information regarding Axesstel from all publicly  
14 available sources and reflected such information in Axesstel's stock price. Under  
15 these circumstances, all purchasers of Axesstel securities during the Class Period  
16 suffered similar injury through their purchase of Axesstel securities at artificially  
17 inflated prices and a presumption of reliance applies.  
18  
19  
20

### 21 **NO SAFE HARBOR**

22 56. The statutory safe harbor provided for forward-looking statements  
23 under certain circumstances does not apply to any of the allegedly false statements  
24 pleaded in this Complaint. The statements alleged to be false and misleading herein  
25 all relate to then-existing facts and conditions. In addition, to the extent certain of  
26 the statements alleged to be false may be characterized as forward looking, they  
27  
28

1 were not identified as “forward-looking statements” when made and there were no  
2 meaningful cautionary statements identifying important factors that could cause  
3 actual results to differ materially from those in the purportedly forward-looking  
4 statements. In the alternative, to the extent that the statutory safe harbor is  
5 determined to apply to any forward-looking statements pleaded herein, Defendants  
6 are liable for those false forward-looking statements because at the time each of  
7 those forward-looking statements was made, the speaker had actual knowledge that  
8 the forward-looking statement was materially false or misleading, and/or the  
9 forward-looking statement was authorized or approved by an executive officer of  
10 Axesstel who knew that the statement was false when made.

15 **FIRST CLAIM**  
16 **Violation of Section 10(b) of**  
17 **The Exchange Act and Rule 10b-5**  
18 **Promulgated Thereunder Against All Defendants**

19 57. Plaintiff repeats and realleges each and every allegation contained  
20 above as if fully set forth herein.

21 58. During the Class Period, Defendants carried out a plan, scheme and  
22 course of conduct which was intended to and, throughout the Class Period, did: (i)  
23 deceive the investing public, including Plaintiff and other Class members, as  
24 alleged herein; and (ii) cause Plaintiff and other members of the Class to purchase  
25 Axesstel securities at artificially inflated prices. In furtherance of this unlawful  
26 scheme, plan and course of conduct, defendants, and each of them, took the actions  
27  
28

1 set forth herein.

2           59. Defendants (i) employed devices, schemes, and artifices to defraud;  
3  
4 (ii) made untrue statements of material fact and/or omitted to state material facts  
5 necessary to make the statements not misleading; and (iii) engaged in acts,  
6 practices, and a course of business which operated as a fraud and deceit upon the  
7 purchasers of the Company's securities in an effort to maintain artificially high  
8 market prices for Axesstel securities in violation of Section 10(b) of the Exchange  
9 Act and Rule 10b-5. All Defendants are sued either as primary participants in the  
10 wrongful and illegal conduct charged herein or as controlling persons as alleged  
11 below.  
12  
13  
14

15           60. Defendants, individually and in concert, directly and indirectly, by the  
16 use, means or instrumentalities of interstate commerce and/or of the mails, engaged  
17 and participated in a continuous course of conduct to conceal adverse material  
18 information about Axesstel's business, operations, management, and prospects, as  
19 specified herein.  
20  
21

22           61. These defendants employed devices, schemes and artifices to defraud,  
23 while in possession of material adverse non-public information and engaged in  
24 acts, practices, and a course of conduct as alleged herein in an effort to assure  
25 investors of Axesstel's value and performance and continued substantial growth,  
26 which included the making of, or the participation in the making of, untrue  
27  
28

1 statements of material facts and/or omitting to state material facts necessary in  
2 order to make the statements made about Axesstel and its business, operations,  
3 management, and prospects, in light of the circumstances under which they were  
4 made, not misleading, as set forth more particularly herein, and engaged in  
5 transactions, practices and a course of business which operated as a fraud and  
6 deceit upon the purchasers of the Company's securities during the Class Period.  
7

8  
9 62. Each of the Individual Defendants' primary liability, and controlling  
10 person liability, arises from the following facts: (i) the Individual Defendants were  
11 high-level executives and/or directors at the Company during the Class Period and  
12 members of the Company's management team or had control thereof; (ii) each of  
13 these defendants, by virtue of their responsibilities and activities as a senior officer  
14 and/or director of the Company, was privy to and participated in the creation,  
15 development and reporting of the Company's internal budgets, plans, projections  
16 and/or reports; (iii) each of these defendants enjoyed significant personal contact  
17 and familiarity with the other defendants and was advised of, and had access to,  
18 other members of the Company's management team, internal reports and other  
19 data and information about the Company's finances, operations, and sales at all  
20 relevant times; and (iv) each of these defendants was aware of the Company's  
21 dissemination of information to the investing public which they knew or recklessly  
22 disregarded was materially false and misleading.  
23  
24  
25  
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1           63. The Defendants had actual knowledge of the misrepresentations  
2 and/or omissions of material facts set forth herein, or acted with reckless disregard  
3 for the truth in that they failed to ascertain and to disclose such facts, even though  
4 such facts were available to them. Such defendants' material misrepresentations  
5 and/or omissions were done knowingly or recklessly and for the purpose and effect  
6 of concealing Axesstel business, operations, management and prospects from the  
7 investing public and supporting the artificially inflated price of its securities. As  
8 demonstrated by Defendants' overstatements and/or misstatements of the  
9 Company's business and operations throughout the Class Period, Defendants, if  
10 they did not have actual knowledge of the misrepresentations and omissions  
11 alleged, were reckless in failing to obtain such knowledge by deliberately  
12 refraining from taking those steps necessary to discover whether those statements  
13 were false or misleading.

14  
15           64. As a result of the dissemination of the materially false and/or  
16 misleading information and/or failure to disclose material facts, as set forth above,  
17 the market price of Axesstel securities was artificially inflated during the Class  
18 Period. In ignorance of the fact that market prices of the Company's securities  
19 were artificially inflated, and relying directly or indirectly on the false and  
20 misleading statements made by Defendants, or upon the integrity of the market in  
21 which the securities trades, and/or in the absence of material adverse information  
22  
23  
24  
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28

1 that was known to or recklessly disregarded by Defendants, but not disclosed in  
2 public statements by Defendants during the Class Period, Plaintiff and the other  
3 members of the Class acquired Axesstel securities during the Class Period at  
4 artificially high prices and were damaged thereby.  
5

6  
7 65. At the time of said misrepresentations and/or omissions, Plaintiff and  
8 other members of the Class were ignorant of their falsity, and believed them to be  
9 true. Had Plaintiff and the other members of the Class and the marketplace known  
10 the truth regarding the problems that Axesstel was experiencing, which were not  
11 disclosed by Defendants, Plaintiff and other members of the Class would not have  
12 purchased or otherwise acquired their Axesstel securities, or, if they had acquired  
13 such securities during the Class Period, they would not have done so at the  
14 artificially inflated prices which they paid.  
15  
16  
17

18 66. By virtue of the foregoing, Defendants have violated Section 10(b) of  
19 the Exchange Act and Rule 10b-5 promulgated thereunder.  
20

21 67. As a direct and proximate result of Defendants' wrongful conduct,  
22 Plaintiff and the other members of the Class suffered damages in connection with  
23 their respective purchases and sales of the Company's securities during the Class  
24 Period.  
25  
26  
27  
28

**SECOND CLAIM**  
**Violation of Section 20(a) of**  
**The Exchange Act Against the Individual Defendants**

68. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

69. The Individual Defendants acted as controlling persons of Axesstel within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

70. In particular, each of these Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is

1 presumed to have had the power to control or influence the particular transactions  
2 giving rise to the securities violations as alleged herein, and exercised the same.  
3

4 71. As set forth above, Axesstel and the Individual Defendants each  
5 violated Section 10(b) and Rule 10b-5 by their acts and/or omissions as alleged in  
6 this Complaint. By virtue of their positions as controlling persons, the Individual  
7 Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct  
8 and proximate result of Defendants' wrongful conduct, Plaintiff and other  
9 members of the Class suffered damages in connection with their purchases of the  
10 Company's securities during the Class Period.  
11  
12

13  
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

16 (a) Determining that this action is a proper class action under Rule 23 of  
17 the Federal Rules of Civil Procedure;  
18

19 (b) Awarding compensatory damages in favor of Plaintiff and the other  
20 Class members against all defendants, jointly and severally, for all damages  
21 sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial,  
22 including interest thereon;  
23

24 (c) Awarding Plaintiff and the Class their reasonable costs and expenses  
25 incurred in this action, including counsel fees and expert fees; and  
26

27 (d) Such other and further relief as the Court may deem just and proper.  
28

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

DATED: April 24, 2014

**GLANCY BINKOW & GOLDBERG LLP**

By: s/ Lionel Z. Glancy

Lionel Z. Glancy

Michael Goldberg

Robert V. Prongay

Elaine Chang

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**LAW OFFICES OF HOWARD G. SMITH**

Howard G. Smith

3070 Bristol Pike, Suite 112

Bensalem, PA 19020

Telephone: (215) 638-4847

Facsimile: (215) 638-4867

*Attorneys for Plaintiff Jesse Cowan*

**SWORN CERTIFICATION OF PLAINTIFF**

Axesstel, Inc., **SECURITIES LITIGATION**

I, Jesse Cowan, certify that:

1. I have reviewed the complaint and authorized its filing.
2. I did not purchase Axesstel, Inc., the security that is the subject of this action at the direction of plaintiff's counsel or in order to participate in any private action arising under this title.
3. I am willing to serve as a representative party on behalf of a class and will testify at deposition and trial, if necessary.
4. My transactions Axesstel, Inc., during the class period set forth in the Complaint are as follows:

See Attached Transactions

5. I have not served as a representative party on behalf of a class under this title during the last three years except as stated:
6. I will not accept any payment for serving as a representative party, except to receive my pro rata share of any recovery or as ordered or approved by the court including the award to a representative plaintiff of reasonable costs and expenses (including lost wages) directly relating to the representation of the class.

☐ Check here if you are a current employee or former employee of the defendant Company.

I declare under penalty of perjury that the foregoing are true and correct statements.

Dated: 4-7-14

Jesse Cowan  
(Please Sign Your Name Above)

**Jesse Cowan's Transactions in Axesstel Inc.**

<b>Date</b>	<b>Transaction Type</b>	<b>Ticker</b>	<b>Company</b>	<b>Shares</b>	<b>Price</b>	<b>Amount</b>
2/28/2013	Purchase	AXST	Axesstel Inc	1,000	1.4700	\$ 1,470.00
4/2/2014	Sale	AXST	Axesstel Inc	1,000	0.0851	\$ 85.10



## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

JESSE COWAN, Individually and on Behalf of All Others Similarly Situated,

(b) County of Residence of First Listed Plaintiff Oklahoma Co., OK  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Lionel Z. Glancy (#134180), Glancy Binkow & Goldberg LLP  
1925 Century Park East, Suite 2100, Los Angeles, CA 90067  
Telephone: (310) 201-9150

**DEFENDANTS**

AXESSTEL, INC., H. CLARK HICKOCK, and PATRICK GRAY,

County of Residence of First Listed Defendant San Diego Co., CA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**'14CV1037 CAB BGS**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**Private Securities Litigation Reform Act, 15 U.S.C. §§78j(b) and 78t(a); and 17 C.F.R. §240.10b-5**  
Brief description of cause:  
**Securities fraud - Violations of Sections 10(B) and 20(A) of the Exchange Act and SEC Rule 10B-5**

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint:  
**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/24/2014

SIGNATURE OF ATTORNEY OF RECORD

s/ Lionel Z. Glancy

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.